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# HOUSE BILL No. 1296

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-51-2.

**Synopsis:** Motor vehicle tort claims action. Provides that a governmental entity may be held liable for a tort claim involving the negligent operation of a motor vehicle if the claimant's contributory fault is 40% or less. Makes conforming amendments.

**Effective:** July 1, 2003.

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January 13, 2003, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1296

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 34-51-2-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. This chapter does not  
3 apply in ~~any manner~~ to tort claims against governmental entities or  
4 public employees under IC 34-13-3 (or IC 34-4-16.5 before its repeal)  
5 **unless the tort claim alleges the negligent operation of a motor**  
6 **vehicle by a governmental entity or public employee.**  
7 SECTION 2. IC 34-51-2-6 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) In an action  
9 based on fault that is brought against:  
10 (1) one (1) defendant; or  
11 (2) two (2) or more defendants who may be treated as a single  
12 party;  
13 the claimant is barred from recovery if the claimant's contributory fault  
14 is greater than the fault of all persons whose fault proximately  
15 contributed to the claimant's damages. **In addition, if the defendant**  
16 **is a governmental entity or public employee in a tort claim brought**  
17 **under IC 34-13-3 (or IC 34-4-16.5 before its repeal), the claimant**

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1 **is barred from recovery if the claimant's contributory fault is**  
 2 **greater than forty percent (40%).**

3 (b) In an action based on fault that is brought against two (2) or  
 4 more defendants, the claimant is barred from recovery if the claimant's  
 5 contributory fault is greater than the fault of all persons whose fault  
 6 proximately contributed to the claimant's damages. **In addition, if one**  
 7 **(1) or more defendants are governmental entities or public**  
 8 **employees in a tort claim brought under IC 34-13-3 (or**  
 9 **IC 34-4-16.5 before its repeal), the claimant is barred from**  
 10 **recovery from the governmental entity or public employee if the**  
 11 **claimant's contributory fault is greater than forty percent (40%).**

12 SECTION 3. IC 34-51-2-7 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section  
 14 applies to an action based on fault that is:

15 (1) **not a tort claim (in whole or in part) brought under**  
 16 **IC 34-13-3 (or IC 34-4-16.5 before its repeal);**

17 (2) brought against one (1) defendant or two (2) or more  
 18 defendants who may be treated as a single party; and

19 ~~(2)~~ (3) tried to a jury.

20 (b) The court, unless all the parties agree otherwise, shall instruct  
 21 the jury to determine its verdict in the following manner:

22 (1) The jury shall determine the percentage of fault of the  
 23 claimant, of the defendant, and of any person who is a nonparty.  
 24 The jury may not be informed of any immunity defense that is  
 25 available to a nonparty. In assessing percentage of fault, the jury  
 26 shall consider the fault of all persons who caused or contributed  
 27 to cause the alleged injury, death, or damage to property, tangible  
 28 or intangible, regardless of whether the person was or could have  
 29 been named as a party. The percentage of fault of parties to the  
 30 action may total less than one hundred percent (100%) if the jury  
 31 finds that fault contributing to cause the claimant's loss has also  
 32 come from a nonparty or nonparties.

33 (2) If the percentage of fault of the claimant is greater than fifty  
 34 percent (50%) of the total fault involved in the incident which  
 35 caused the claimant's death, injury, or property damage, the jury  
 36 shall return a verdict for the defendant and no further deliberation  
 37 of the jury is required.

38 (3) If the percentage of fault of the claimant is not greater than  
 39 fifty percent (50%) of the total fault, the jury then shall determine  
 40 the total amount of damages the claimant would be entitled to  
 41 recover if contributory fault were disregarded.

42 (4) The jury next shall multiply the percentage of fault of the

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defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

SECTION 4. IC 34-51-2-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7.5. (a) This section applies to an action based on fault that is:**

**(1) a tort claim brought under IC 34-13-3 (or IC 34-4-16.5 before its repeal);**

**(2) brought against one (1) defendant or two (2) or more defendants who are governmental entities or public employees and who may be treated as a single party; and**

**(3) tried to a jury.**

**(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:**

**(1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty. The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.**

**(2) If the percentage of fault of the claimant is greater than forty percent (40%) of the total fault involved in the incident that caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant, and no further deliberation of the jury is required.**

**(3) If the percentage of fault of the claimant is not greater than forty percent (40%) of the total fault, the jury shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.**

**(4) The jury shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and enter a verdict for the claimant in the amount of the product.**

SECTION 5. IC 34-51-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8. (a) This section**

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applies to an action based on fault that:

- (1) **is not a tort claim (in whole or in part) brought under IC 34-13-3 (or IC 34-4-16.5 before its repeal);**
- (2) is brought against two (2) or more defendants; and
- ~~(2)~~ (3) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants, and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3).

SECTION 6. IC 34-51-2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8.5. (a) This section applies to an action based on fault that:**

- (1) **is a tort claim (in whole or in part) brought under IC 34-13-3 (or IC 34-4-16.5 before its repeal);**
- (2) is brought against two (2) or more defendants; and

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(3) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident that caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants, and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is greater than forty percent (40%) of the total fault involved in the incident that caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant who is a governmental entity or public employee.

(4) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(5) The jury shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (4) and enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages determined under subdivision (4).

SECTION 7. IC 34-51-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. In an action based on fault that is tried by the court without a jury, the court shall make its award of damages according to the principles specified for juries in sections 7, 7.5, and 8, and 8.5 of this chapter.

